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BRULTE AND ACKERMAN ACCUSE STATE AGENCIES OF CIRCUMVENTING THE LAW

Senate Budget And Fiscal Review Committee Urged To Review Intentional "Shell Game" Played By State Agencies

(SACRAMENTO, CA) - - Senate Republican Leader Jim Brulte (R-Rancho Cucamonga) and Senator Dick Ackerman (R-Tustin) discussed and urged the Senate Budget and Fiscal Review Committee to address the intentional "shell game" played by state agencies to circumvent the Legislature's budgeting process. State agencies are intentionally holding state positions open so that they can use funds for purposes not approved by the Legislature.

"State agencies are playing an elaborate 'shell game' with taxpayer dollars," said Brulte. "This is a serious problem within the State budget and the Legislature must make it a top priority. State agencies should be required to prove how many positions have been filled and when they were filled."

State agencies use a little known mechanism, "120-transactions," to shift personnel between established positions. Employees in the same department are rotated in-and-out of positions in a six-month period, thus ensuring that the position will not be eliminated.

Last year, Governor Davis signed budget trailer bill (AB 2866/Migden) which was designed to control the growth of vacant positions. AB 2866 requires the Controller, effective July 1 of every fiscal year, to abolish any position that has remained continuously vacant for a *six-month* period in the previous fiscal year. Departments, however, consciously circumvent the new law.

"The Legislature has a constitutional duty to put a stop to this practice. State agencies are diverting hundreds of millions of dollars allocated for personnel for other purposes," said Ackerman.

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BUDGET BRIEFS

VACANCIES IN STATE GOVERNMENT **THE PROBLEM IS GROWING**

IN THIS BRIEF:

- **THE SHELL GAME REVEALED**
- **THE GROWING VACANCY PROBLEM**
- **CIRCUMVENTING STATE LAW**
- **IMMEDIATE SAVINGS OF \$380 MILLION**
- **CAPTURING FUTURE SAVINGS**

THE SHELL GAME REVEALED

In March 2000, Senator Brulte released a detailed analysis that highlighted a growing number of vacant positions throughout state government and documented a “budget shell game” through which numerous state departments were circumventing standard budget policy. **This analysis noted that as of 1998-99, numerous state departments had approximately 12,000 vacant positions beyond the 9,800 traditionally associated with the budgeted 5-percent “salary savings.”** Furthermore, the analysis questioned why nearly \$250 million that had been budgeted for the salary & benefits associated with these 12,000 “excess” vacant positions was spent elsewhere (the “shell game”).

In April 2000, the Department of Finance (DOF) released an extensive report confirming the Republican analysis. To address these concerns, the 2000 Budget Act eliminated approximately 3,600 positions, or 30 percent of the total excess vacancies. In addition, a Budget trailer bill added statutory language making it more difficult for departments to hold “excess” positions vacant. (See Circumventing State Law below).

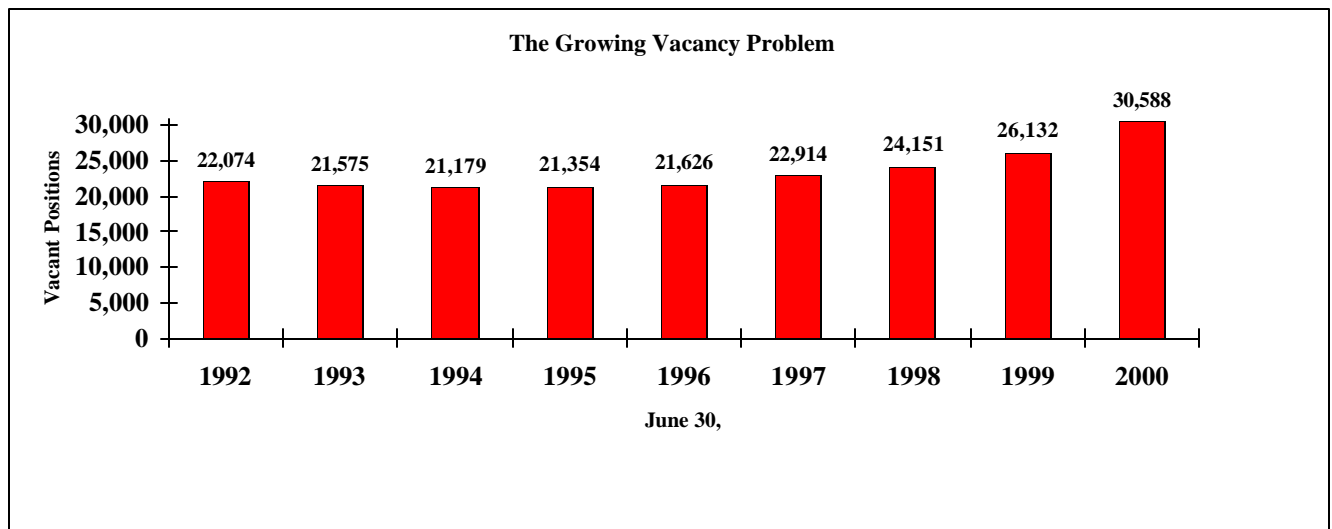
This fall, DOF continued its review of vacancies when developing the 2001-02 Governor’s Budget. In a letter to the Joint Legislative Budget Committee dated January 10, 2001, the Director of Finance advised that the Administration was “proposing to eliminate [an additional] 3,100 positions.” This figure included 600 vacant positions previously scheduled to expire in the current fiscal year (“limited term

positions”); 1,650 vacant positions proposed for redirection to other needs; and 850 vacant positions proposed for elimination. The redirections were in lieu of adding new positions to various departments. Thus, the Administration proposes taking action on approximately 6,700 “excess” vacant positions.

The Department of Finance proposes to retain the remaining 5,600 vacant positions identified last year. According to Finance, these positions are needed by the departments but are difficult to fill due to labor shortages and private sector competition for a limited labor pool. Examples include positions in health professions, information technology, science and technical specialists, and auditors and investigators.

THE GROWING VACANCY PROBLEM

The chart below shows that the numbers of state vacancies has actually increased substantially over the past few years. Controller’s Office payroll data show that the number of vacant state positions increased from 24,151 on June 30, 1998 to 30,588 on June 30, 2000— an increase of 6,437 positions, or 27 percent.



One reason for the continuing escalation of vacancies is simply the rapid increase in the size of state government. The Summary Schedule 6 (Appendix 25 in the 2001-02 Governor’s Budget Summary) reveals that the budgeted size of the state workforce has increased by 34,509 positions since 1998.

In its vacancy report, the DOF used data from the Budget to estimate the number of excess vacancies. However, this data will not be available for the 2000-01 fiscal year until next year’s Budget is prepared. Therefore, in order to develop a more up-to-date and accurate estimate, we examined the Controller’s payroll data for the month ending December 31, 2000. This data indicates that there are 203,015 civil service and exempt positions in state government (exclusive of UC, CSU, and legislative staff), of which 29,902 were vacant – a vacancy rate of 15 percent.

However, this data does not include about 15,000 positions that have been authorized in the Budget but that have never been “established” in the Controller’s payroll data base. Thus, we estimate that on December 31, 2000 there were 44,902 vacant positions. The DOF estimates that there are about 6,700 “blanket” positions (i.e. temporary help, data entry errors) not reflected in the Controller’s data.

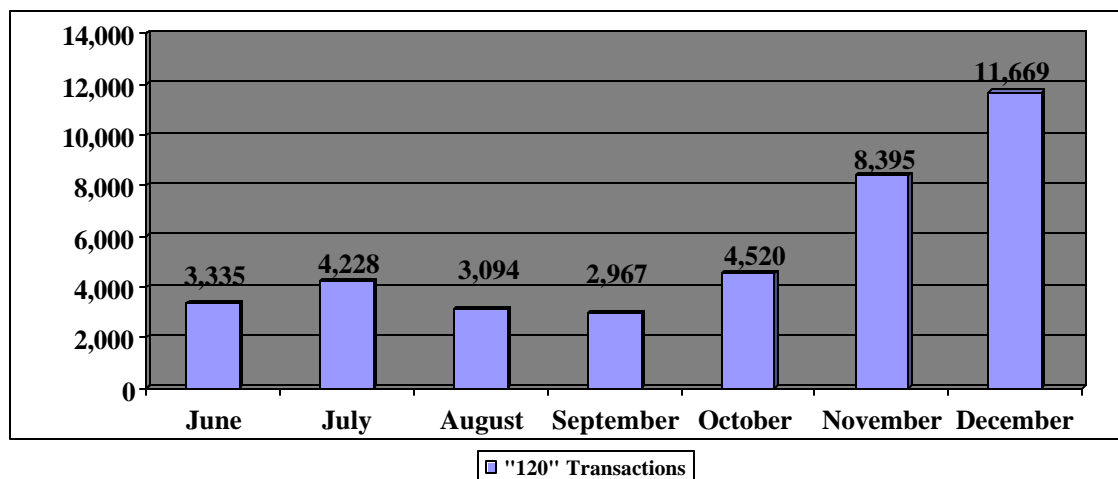
Finally, the Budget includes a salary saving adjustment which dictates that about 10,000 positions *should be vacant* at any given time due to normal turnover and hiring lags. ***Thus, we estimate that the number of excess vacancies has jumped from the 12,000 level estimated by DOF for 1998-99 to 28,202 (44,902 less 6,700 less 10,000) in the current year.***

It is important to note that: (1) this is a point-in-time figure and the annual average for the current year may vary slightly from this level, and (2) some of these positions are probably being held vacant due to unavailability of federal funds or reimbursements. Nevertheless, our analysis of the Controller's payroll data clearly shows that, despite the best efforts of the Legislature and the Department of Finance, the amount at stake in this budget shell game has grown substantially.

CIRCUMVENTING STATE LAW

Another reason that the vacancy problem continues to grow out of control is that state departments have intentionally acted to subvert the will of the Governor and the Legislature.

Last year, Governor Davis signed Budget trailer bill legislation (AB 2866/Migden) which was designed to control the growth of vacant positions (G.C. 12439). Prior to this change, the Controller was required to abolish any position that remained continuously vacant for the nine-month period of October 1 to June 30. AB 2866 requires the Controller, effective July 1 of every fiscal year, to abolish any position that has remained continuously vacant for a *six-month* period in the previous fiscal year. However, as the chart below indicates, departments consciously circumvented the new law.



To do this, departments have used a little known mechanism, "120-transactions," to shift personnel between established positions. In other words, employees in the same department are rotated in-and-out of positions before the six-month period expires, thus ensuring that the position will not be eliminated. As the chart shows, there were over 20,000 "120-transactions" during the months of November and December alone. The Controller's Office advises that the level of activity in these months is comparable to activity levels under the old law in April and May. In other words, departments have accelerated their use of this subterfuge to get around the new law.

In addition, the Controller has identified over 3,500 positions that were continually vacant from July 1 through December 31. Under AB 2866 these positions will be abolished on July 1, 2001. However, the Controller's Office advises that even these positions could be retained if departments process retroactive "120-transactions" prior to the end of the fiscal year as there is nothing in current law that prevents this practice.

IMMEDIATE SAVINGS OF \$380 MILLION

Although the 5,600 excess vacant positions proposed for retention by the Administration were established over three years ago, the 2001-02 Governor's Budget reflects very little cost savings associated with them. Given the growing numbers of vacancies, there is no question that these positions will generate actual dollar savings in the current year. We project that the savings associated with these 5,600 positions remaining vacant during the current year will be \$420 million (or \$75,000 per position). Since, the 2001-02 Governor's Budget reflects only about \$40 million in current-year savings associated with all of the operations of state government, we recommend that the Legislature capture \$380 million associated with excess vacancies in the current year.

Specifically, the Legislature should (1) re-appropriate these savings from the current year into the budget year and (2) reduce the corresponding budget-year appropriation by a like amount. By transferring this money into the coming year, the Legislature will ensure that the bureaucracy does not spend the funds associated with these vacancies without its approval.

CAPTURING FUTURE SAVINGS

"Government is like a baby – an alimentary canal with a big appetite at one end and no sense of responsibility at the other." Ronald Reagan.

From the analysis above, it is apparent that departments are reluctant to relinquish the flexibility that they derive from the "budget shell game." While capturing \$380 million of salary savings in the current year will prevent those funds from being redirected and spent without Legislative oversight this year, it does not address the problem in the future. We therefore recommend that the Legislature abolish 5,622 positions from the 2001-02 Governor's Budget and reduce departmental appropriations accordingly for an on-going savings of \$420 million.

In addition, we recommend that the budget subcommittees require departments to report on their vacancies, including positions authorized but never established in the Controller's payroll system during budget hearings this year. Departments should justify any request to retain positions/funding for any vacancies above their budgeted salary savings.

Finally, we believe the intentional misuse of the 120-transaction process to prevent vacant positions from being abolished should be outlawed.

For further information, please contact the Senate Republican Fiscal Office, at (916) 323-9221.

WHAT IS THE “SHELL GAME” / HOW DOES IT WORK ?

The Budget Shell Game

Put most simply, the “Budget Shell Game” is hundreds of millions of dollars allocated for state employee salaries and benefits that are spent elsewhere in the bureaucracy on items never reviewed by or approved by the Legislature, Administration or the general public. The “Shell Game” prevents the Legislature from exercising its fiduciary role of budget oversight of the state bureaucracy.

The Governor's Budget contains funding for over 200,000 positions located in a myriad of state bureaucracies. The State of California budgets over \$10 billion annually for the salaries of those employed in these agencies over the last decade. However, the number of positions actually filled by state agencies has been considerably less than the funding associated with these positions. It is these “excess vacancies” which provide the funds available to play the “Shell Game.” There are a large number of positions (10,000 to 15,000) deliberately held vacant by the bureaucracy in order to generate savings to cover un-funded items elsewhere which are not directly budgeted for. Legislative fiscal committees cannot review these expenditures because they are not identified by the bureaucracy. The result of this is that departments routinely request additional positions from legislative budget committees even though they already have hundreds, or in some cases, thousands of vacant positions. They continue to ask for positions as a way to get additional funds into their respective budgets; then they take the dollars associated with those positions and redirect them to other areas of expenditure outside of legislative review.

Departments Circumvent State Law to Play the “Shell Game”

In July of 2000, Governor Davis signed legislation designed to control the growth of vacant positions (AB 2866 / Migden). This new law requires the State Controller's Office (SCO) to abolish any position continuously vacant for six months. However, the bureaucracy has found ways to circumvent this new law by “gaming” the state personnel system. Known as “120 transactions”, departments in the bureaucracy use payroll action request forms (607's) to move live bodies from one vacant position into another vacant position thereby showing all their authorized positions “filled” at least twice in any 12 month period of time. Based upon SCO data, 38,000 such transactions took place between June and December of 2000. More importantly, there were over 20,000 of these transactions during the months of November and December of 2000 which were clearly done in an attempt to circumvent the first “6 month” window brought about by the new law.

Fifteen Percent of All Positions Are Vacant

According to the Legislative Analyst Office, as of December 31, 2000, about 15 percent of all 203,000 state positions were vacant resulting in statewide vacancies of almost 30,000. However, in some departments, the vacancy rate is much higher than this, for example, the Bureau of Automotive Repair and Department of Industrial Relations have a current vacancy rates approaching 20 percent and the Department of Parks and Recreation has a vacancy rate of 24 percent.

CALTRANS

How the Shell Game is Played

Excerpts from the "How To" Memo

"If these positions are vacant for six consecutive monthly pay periods – they will be abolished. Sooo – we need to do something with them now – even abolish them – so SCO does not "flag" these positions on their report to DOF then we will be forced to abolish the position and the resources that accompany it! If "we" are the ones to abolish the position – the position authority will be saved and the resources will not be lost through this 6 month vacancy process."

Question: "OK ...am I to understand your previous email to say that it is OK to abolish position that are in jeopardy and NOT lose funding associated with those positions? In other words, we can reestablish at a later date? If so...goody."

Answer: "Yes – Abolish those positions that are in jeopardy now to avoid losing the funding associated with them."

"The position workgroup agreed to use November 10 as a target date for having any PARF document to Personnel for processing (whether new hire, *shell game of rotating staff through the vacant position*, or abolish the position) that will ensure a vacant position will be paid out of the December pay period."

BUREAUCRACY RUN AMOK

In July of 2000, Governor Davis signed legislation designed to control the growth of vacant positions (AB 2866 / Migden). This new law requires the State Controller's Office (SCO) to abolish any position continuously vacant for six months and for the Department of Finance (DOF) to remove the funds budgeted for these positions from the annual state budget (see G.C. 12439).

The attached memo dated November 10, 2000 demonstrates how seriously the state bureaucracy has run amok with respect to the "Budget Shell Game" and excess state vacancies. The attached memo specifically shows how state managers at the Department of Transportation (Caltrans) are deliberately circumventing the new law and G.C. 12439.

Specific Facts

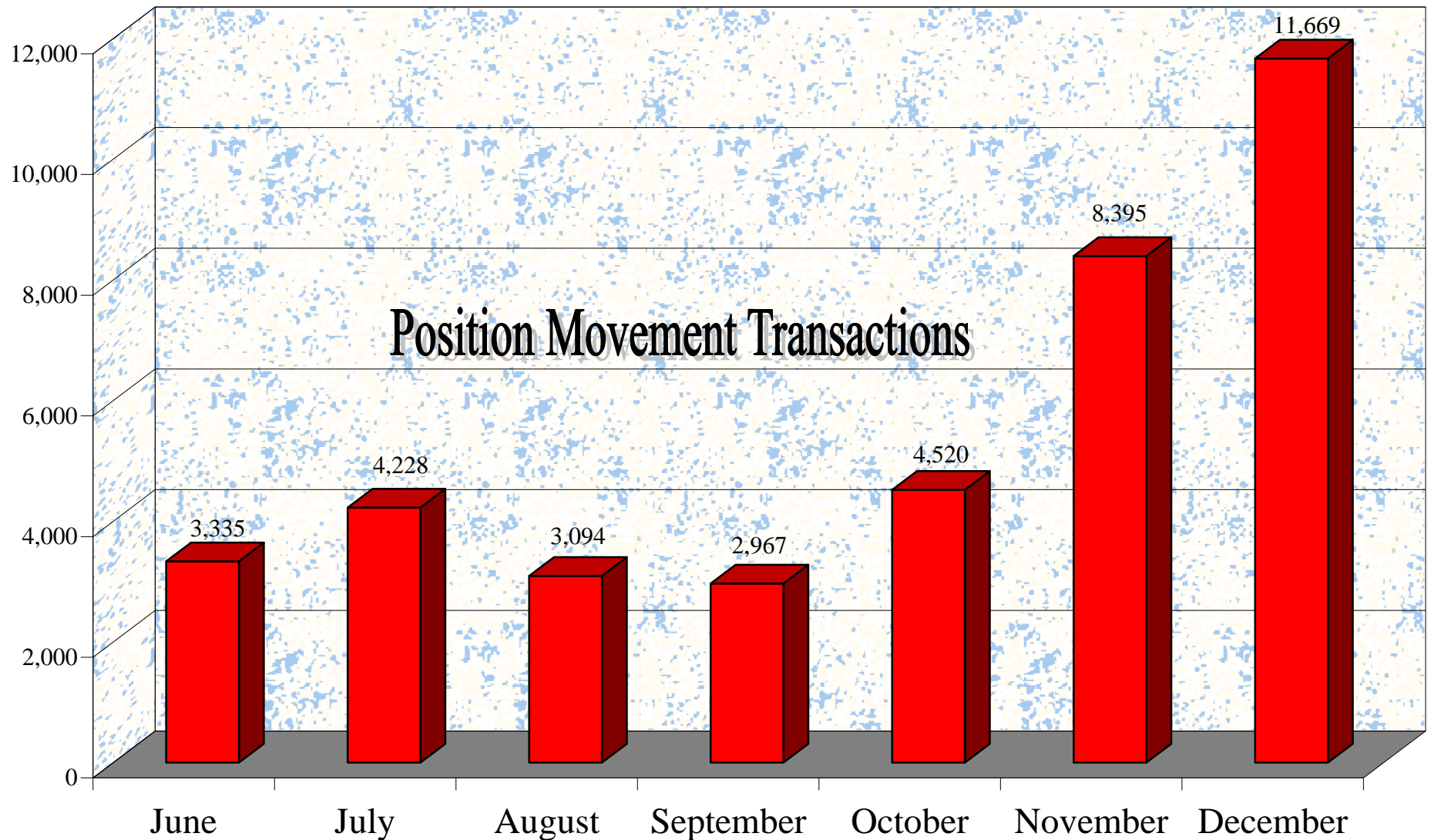
- This memo is from a manager in the Caltrans Budget Division Headquarters in Sacramento and is addressed to all resource (budget) managers in Caltrans statewide.
- The Caltrans management memo explains in detail how Caltrans resource managers should willfully circumvent the intent of the new state law (as outlined in DOF budget letter 15) and prevent the SCO and the DOF from taking away any funds budgeted for these positions from Caltrans.
- The basic technique Caltrans is using to get around the new state law is to abolish their vacant positions internally BEFORE the SCO has a chance to catch the excess vacancies in reports they run in 2001 under the provisions of the new law. The Caltrans memo goes on to explain that by doing this, Caltrans can then re-establish the positions later in the year and thus avoid the SCO earmarking the elimination of these positions. By doing this, Caltrans also prevents the DOF from taking the funding associated with those positions. **In essence, Caltrans is preempting the SCO's administration of the new law and then re-establishing these excess vacancies at a later date in order to play the "Shell Game."**

What the memo says:

- If Caltrans abolishes its vacancies before the SCO does, they can keep their position authority and money associated with it. (p.3)
- Caltrans strategy is to preempt the SCO from administering the new law thereby preventing the excess vacancies from being flagged by the SCO and preventing the DOF from taking the money budgeted for them. (p. 4)
- Directs Caltrans resource (budget) managers to preemptively abolish their vacancies preventing the SCO from administering the new law and thus allow Caltrans to continue playing the "Shell Game". The memo also makes it clear that this action will prevent the DOF from exercising its role in the new law. (p.5)
- Defines the budget practice as a "Shell Game" thus making it absolutely clear that the bureaucracy run amok is perfectly aware of what it is doing and the consequences of its actions. (p.6)

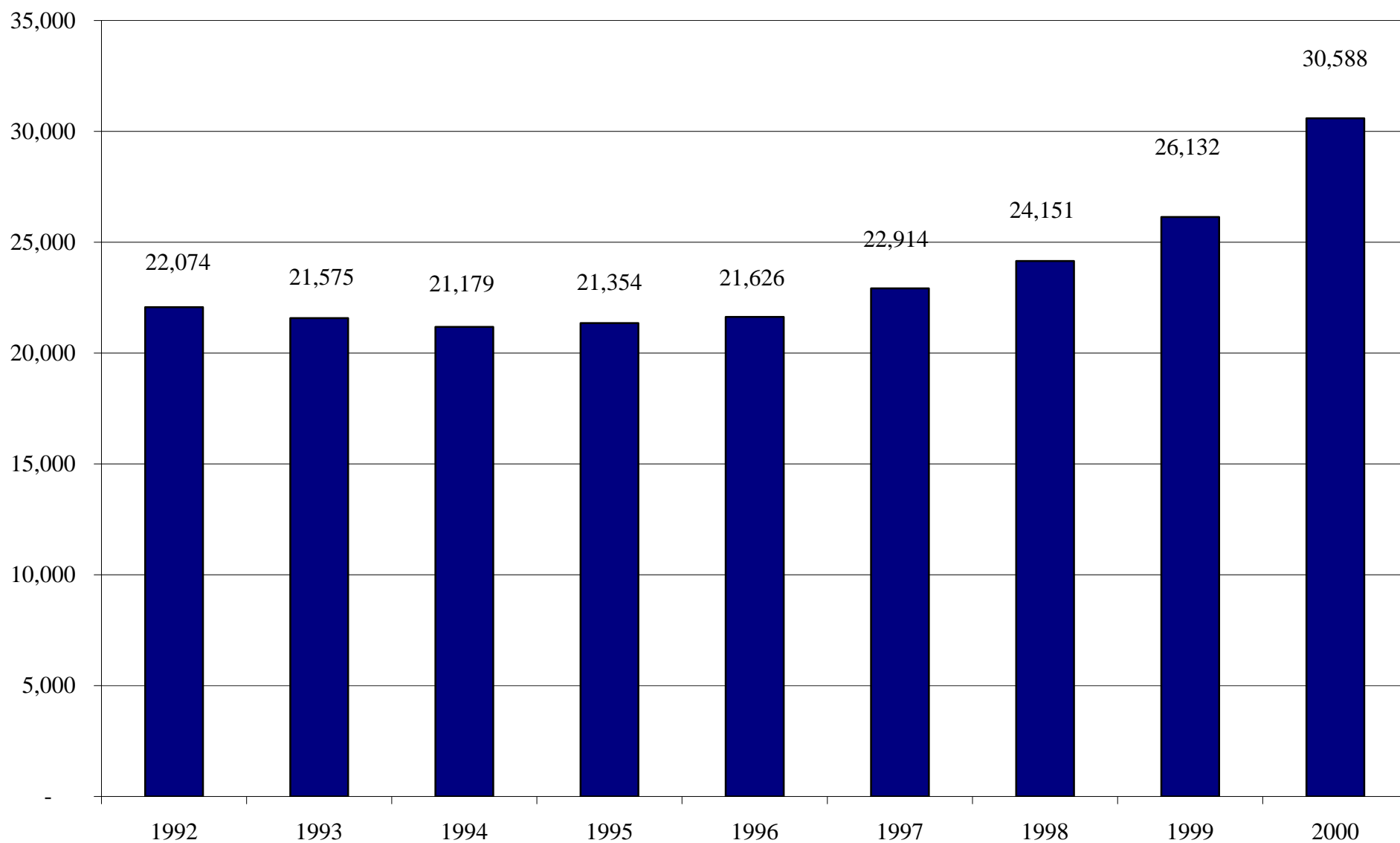
The Shell Game

Bureaucracy Run Amok



Source Data: State Controller's 120 Transaction Report

Vacancies at Historic Highs



Source Data: State Controller's Vacancy Reports